
50 CFR Part 17**Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine Endangered Status for *Scaevola Coriacea* (Dwarf Naupaka)**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for *Scaevola coriacea* (dwarf naupaka). Populations, once prevalent throughout the major Hawaiian Islands, are now

limited to four small areas of State and privately owned land in Maui County, Hawaii. The only significant population, near Waiehu Point, is threatened by imminent residential development.

Approximately two-thirds of the plant's remaining habitat will be impacted by this action. Protective measures for the remaining plants are needed.

Determination of *Scaevola coriacea* as endangered would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks relevant data and comments.

DATES: Comments from all interested parties must be received by September 16, 1985. Public hearing requests must be received by August 30, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and

Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Division Chief, Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Scaevola coriacea is a sparsely branched, prostrate shrub found in close proximity to the ocean. It was first collected by David Nelson in 1779, and later described by T. Nuttall (1843), based on specimens collected on "Atooi" (Kauai) in 1835. Its leaves are thick and succulent, light green, and about 2.5 centimeters (1 inch) in length. Cream-colored flowers, 1.9 centimeters (0.75 inch) long, may open at any time during the year. The flower is typical of the genus *Scaevola*, with a corolla split down the upper side so that it resembles half of a radially symmetrical flower that has been divided longitudinally. This is sometimes referred to as a "half-flower." The fruit is purplish black and approximately 1.3 centimeters (0.5 inch) in length, and contains 2 seed cells (Carr, 1981). Single plants may cover up to 10 square meters (108 square feet) of surface area.

Sites occupied by *Scaevola coriacea* are mostly on low, consolidated sand dunes near the ocean. The habitat is relatively dry and hot, averaging around 79 centimeters (31.5 inches) of precipitation per year (Carr, 1981). The sites receive high insolation and most of the vegetation is at or near ground level. Associated species include *Scaevola taccada* (a common, shrubby member of the same genus), *Bidens mauriensis*, *Nama sandwicensis*, *Boerhavia diffusa*, and *Lipochaeta integrifolia* (Herbst, 1972).

Historically, populations of *Scaevola coriacea* were present on all the major Hawaiian islands, with Maui supporting the most extensive populations. Presently, only four small populations remain in Maui County, Hawaii: At Waiehu Point, West Maui; at Kaupo, East Maui; on the islet of Moke'ehia, off West Maui; and on the islet of Mokuho'oniki, east of Molokai. The islets are part of the Hawaiian State Seabird Sanctuary and are under the jurisdiction of the State Department of Land and Natural Resources. The Waiehu Point population is split between State and private ownership.

The State-owned land is under the jurisdiction of the County of Maui. The Kaupo population is entirely on private land. Loss of current and suitable habitat to development represents the major threat to the species. Protection of the remaining habitat from degradation, through a cooperative State, Federal, and County effort, is needed to ensure the species' continued existence.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the *Federal Register* (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended). On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Scaevola coriacea* was included in the Smithsonian report, the notice of review of July 1, 1975, and the proposal of June 16, 1976.

The Endangered Species Act, as amended in 1978, required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired (44 FR 70796). In the *Federal Register* of December 15, 1980 (45 FR 82480), the Service published a revised notice of review. *Scaevola coriacea* was included in this notice as a category-1 species, indicating that existing data warranted proposal to list as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. *Scaevola coriacea* was subject to this provision, so that a finding was required within one year as to whether its listing was warranted. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Scaevola coriacea* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made

on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Scaevola coriacea* (dwarf naupaka) Nutt. are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, *Scaevola coriacea* was present on all the major Hawaiian islands, with Maui supporting the largest populations. Presently, the species only exists in four small areas of Maui County, Hawaii: Waiehu Point, West Maui; Kaupo, East Maui; the islet of Moke'ehia off West Maui; and Mokuho'oniki, east of Molokai. The entire known population consists of approximately 350 individuals, 300 of which are found at Waiehu Point (Carr, 1981).

The Waiehu Point population occurs on four sand dunes, both on State land, as part of Waiehu Golf Course, and on private land, owned by a realty company. The latter is scheduled for development in the near future. Loss of nearly two-thirds of the species' remaining habitat will result from this action. Habitat degradation of the remaining fraction of public land by the activity of golfers off the fairway is a potential, but probably minimal, threat to the plant.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Scaevola coriacea* is subject to taking and vandalism due to the accessibility of its habitat and current unprotected status. The flowering plant is attractive and has been noted as being "... a worthwhile plant for homes by the beach" (Degener and Greenwell, 1950).

C. *Disease or Predation.* No such threats to *Scaevola coriacea* are known to occur at this time.

D. *The inadequacy of existing regulatory mechanisms.* A special permit is required to land on Mokuho'oniki islet. No additional

protection is now provided to *Scaevola coriacea*.

E. Other natural or manmade factors affecting its continued existence.

Further reductions of the breeding population may have adverse effects on the reproductive capacity and survival ability of this species (Carr, 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Scaevola coriacea* as endangered. The low number of individuals in the wild and the imminent loss of two-thirds of its remaining habitat warrant this decision. Critical habitat is not being designated because of the reasons described below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," *Scaevola coriacea* is potentially subject to collecting, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. The plant currently occurs on State and private land outside Federal jurisdiction. Publication of critical habitat descriptions would make this species more vulnerable to taking and vandalism. In addition, there would be no net benefit to this species from such a designation. Therefore, it is not prudent to designate critical habitat for *Scaevola coriacea* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Section 6 of the Endangered Species Act of 1973, as amended, details conditions for cooperative action between the Service and State agencies. Such actions as the establishment of

conservation programs, acquisition of land, scientific research, and funding are provided for under section 6(b), management, and 6(c), cooperative agreements. The State of Hawaii has entered into a cooperative agreement with the Service. Since much of the remaining habitat of *Scaevola coriacea* occurs on State land, cooperation among Federal, State, and County officials will be necessary to ensure the continued survival of the species. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to areas proposed or designated as critical habitat. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal activities are known or expected to affect *Scaevola coriacea*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Scaevola coriacea*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Cultivated specimens of *Scaevola coriacea* can be found at several sites in Hawaii, including the

Maui Zoo and Botanical Garden and the courtyard of the Plant Science Building at the University of Hawaii. However, it is anticipated that few trade permits would ever be sought or issued since the species is not otherwise common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This provision would apply to *Scaevola coriacea* should it be found on Federal land. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Scaevola coriacea* is known only to occur on State and privately owned land. It is anticipated that few, if any, collecting permits would ever be requested for the species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Scaevola coriacea*;

(2) The location of any additional populations of *Scaevola coriacea* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Scaevola coriacea*.

Final promulgation of the regulation on *Scaevola coriacea* will take into consideration the comments and any additional information received by the Service, and such communications may

lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see "ADDRESSES" section, above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G.D. 1981. Unpublished status survey of *Scaevola coriacea*. U.S. Fish and Wildlife Service, Honolulu, Hawaii, 40 pp.

Degener, O., and A. Greenwell. 1950.

Scaevola coriacea Nutt. In: *Flora Hawaiiensis*, Honolulu, Hawaii.

Herbst, D.R. 1972. Botanical survey of the Waiehu sand dunes. The Bulletin, Pacific Tropical Botanical Garden 2:6-7.

Nattall, T. 1843. Descriptions and notices of new or rare plants. Transactions of the American Philosophical Society, N.S. 8:251-272.

Author

The primary author of this proposed rule is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975). Preliminary documentation was prepared under contract by Dr. Gerald D. Carr and Laurence Torok.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Goodeniaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Goodeniaceae—Goodenia family:						
Scaevola coriacea.....	Dwarf naupaka	U.S.A. (HI).....	E		NA	NA

Dated: June 10, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-16797 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-55-M